IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 9719 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESHBHAI VISHNUBHAI PATEL - Applicant(s)
Versus
VISHNUBHAI RAMBHAI PATEL & 2 - Respondent(s)

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Appearance :
MR RAJESH B SONI for Applicant(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,
Respondent(s) : 2 DELETED,
MR M.R.MENGDE, APP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 08/08/2007

ORAL JUDGMENT

By way of this Application under Section 482 of the Code of Criminal Procedure, the applicant herein (original accused in Criminal Case No.1502/2004) has

prayed for an appropriate order to quash and set-aside the order dated 4th September, 2004 for issuance of process in the Criminal Case No.1502/2004 and to quash and set-aside the criminal proceedings of Criminal Case No.1502/2004 pending before the learned Chief Judicial Magistrate, Surendranagar.

A criminal complaint has been filed by the respondent no.1 herein (original complainant) against the petitioner in the Court of learned Chief Judicial Magistrate, Surendranagar being Criminal Case No.1502/2004 for the offences under Sections 138 and 142 of the Negotiable Instruments Act (hereinafter referred to as, **"the Act"**), inter alia, alleging that the petitioner had given one cheque bearing no.175589 dated 21st July, 2004, drawn on the Ahmedabad District Cooperative Bank Limited, D-Cabin Branch, Sabarmati, Ahmedabad in the sum of Rs.1,90,000=00 of SB Account No.7465. When the said cheque was presented, it has been returned with an endorsement "*funds insufficient*". It is further averred in the complaint that thereafter a statutory notice was sent to the petitioner by RPAD but the same has been returned

with an endorsement "*refused*". As the said amount has not been paid within the stipulated period, the petitioner has committed offence under Section 138 of the Act. In the said complaint, the trial Court has passed order to issue summons upon the petitioner for the offence under Section 138 of the Act.

The learned advocate appearing on behalf of the petitioner has submitted that the petitioner had neither signed any such cheque nor had he issued any cheque to the complainant more particularly the account No.SB 7465 was not of the petitioner at all and when the petitioner was not the account holder of account No.SB 7465 from which the impugned cheque was issued, it cannot be said that the petitioner has committed any offence as alleged under Section 138 of the Act. Therefore, it is requested to quash the said complaint and allow the present Application.

Though served, nobody appears on behalf of the respondent no.1 (original complainant). Before issuance of the rule, learned Single Judge of this Court has, by his order dated 7th December, 2005,

specifically observed that though the opponent no.1 is served he has not remained present. Therefore, there is presumption that he is not interested in contesting the matter. Under the circumstances, this Court has proceeded further with the present Application ex-parte so far as the respondent no.1 (original complainant) is concerned.

Considering the averments in the complaint as well as the petition and the specific contentions of the petitioner that the present petitioner was not holding any account in the Ahmedabad District Cooperative Bank Limited more particularly account No. SB 7465, it seems that there was no question of issuing cheque by the petitioner and the present complaint has been filed with a malafide intention.

Considering the above, which is not disputed, it cannot be said that the petitioner has committed any offence under Section 138 of the Act, as alleged. It is also required to be noted at this stage that after the notice the petitioner was served with the summons issued by the learned Chief Judicial Magistrate.

Immediately thereafter the petitioner had approached the General Manager of the Ahmedabad District Cooperative Bank Limited pointing out and making a grievance that when the petitioner was not holding the said bank account how the said cheque has been issued and by whom.

Considering the above and considering the fact that the petitioner was not holding the account no. SB 7465, it cannot be said that the petitioner has committed offence under Section 138 of the Act, as alleged.

Under the circumstances, to continue further with the criminal proceeding against the petitioner would be nothing but the abuse of process of law. Therefore, the impugned complaint is required to be quashed and set-aside.

For the reasons stated above, the petition succeeds. The impugned complaint being Criminal Case No.1502/2004 pending before the learned Chief Judicial Magistrate, Surendranagar is hereby quashed

and set-aside. Rule is made absolute accordingly.

(M.R. Shah, J.)

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